IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8609 OF 2003

Bharti Education Society & Anr ...Petitioners

Versus

Smt. Indrapatidevi @ Indra Ambikaprasad Pandey & Ors. ...Respondents

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Mr. N.V.Bandiwadekar with Mr. Dilip Bodake, counsel for Petitioners.

Mr. M.P. Vashi with Shaikh Nazir Masib counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 28TH MARCH, 2005

P. C.:-

1. Heard Mr. Bandiwadekar with Mr. Bodke, the learned counsel for the petitioner Management and Mr. Vashi, the learned counsel for the respondent No.1 teacher. This petition arises from the judgment and order dated 20.6.2003 rendered by the School Tribunal, New Mumbai in Appeal No.342 of 1998.

2. The respondent No.1 had filed the said appeal under Section 9(1)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "The MEPS Act"), alleging that she was illegally removed from service as an

Assistant Teacher w.e.f. 2.11.1998 by an oral order. The said appeal was initially dismissed by the School Tribunal as not tenable by its order dated 15.1.1999. The said order was challenged in writ petition No. 1045 of 1999 and the petition was allowed by directing the School Tribunal to decide the appeal on merits and in addition the Management was directed to forward the application of the respondent employee to the appropriate authority for admission to the postal D.Ed. course.

3. The respondent employee came to be appointed as an Assistant Teacher on or about 13.11.1990 while she was holding the qualification of H.S.C. only. She acquired the certificate in the Craft Course in 1995. In her appeal before the School Tribunal, she had contended that some times towards the end of October 1998 she was transferred from primary section to pre primary section and when she refused to report at the pre primary section, she was not allowed to join her duties at the primary section from 2.11.1998 and therefore, alleging that this is an act of oral termination, she had approached the School Tribunal. She passed her D.Ed. examination sometimes in May, 2002 and thus became duly qualified for appointment as a trained teacher in the primary school.

4. Mr. Bandiwadekar, the learned counsel for the

petitioner Management has referred to two decisions of this Court in the case of **Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal & Ors. [1997 (3) Mh.L.J. 697] and Ashok Asramji Gabhane Vs. Presiding Officer, School Tribunal [2002 (4) Mh.L.J. 225].** He submitted that the School Tribunal was required to frame the preliminary issue in the instant case regarding the eligibility of the respondent for appointment as an Assistant Teacher in the primary school and her status as an approved teacher, the Tribunal did not frame these issues and proceeded to allow the appeal which is contrary to the law laid down by this Court in the case of Anna Pethe (supra). It was further contended that even on the date the appeal was filed, the respondent No.1 was not a qualified teacher and her appointment could not have been approved as an Assistant Teacher in the primary school.

5. It is to be noted that the petitioner Management filed its written statement for the first time on or about 5.1.2000 raising several issues including the maintainability of the appeal on the grounds that the respondent employee was a teacher in the pre-primary school and the Management was a minority institution. The school Tribunal considered the averments made by the respective parties and held that the respondent No.1 was working in the primary school and the

alleged oral termination w.e.f. 2.11.1998 was illegal and therefore, it was liable to be quashed and set aside.

6. Coming to the first issue of approval to the appointment of respondent No.1 as an Assistant Teacher, the record shows that her appointment was approved for the academic year 1996-97 as is evident from the letter dated 15.2.2002 addressed by the Administrative Officer of the Education Board of the respondent Corporation while it was the Municipality and the same is also reflected in the letter addressed by the petitioner Management to the said Administrative Officer on 27.2.2003. The only query raised was whether her appointment was approved for the primary or pre primary section. The respondent No.1 acquired the qualifications of Certificate Course in Craft in 1995 and H.S.C. plus Craft Certificate is an approved qualification for appointment as a Craft Teacher. It is not necessary to examine whether the respondent No.1 was appointed as a Craft Teacher or simply as an Assistant Teacher, by the petitioner at this stage.

7. The dispute before the School Tribunal was in a narrow compass, for the teacher had claimed that she was not allowed to report in the primary school and she was illegally and forcibly transferred to the pre

primary school where she was not appointed at any time. The Management also in its written statement did not dispute this position and in fact took up a plea that there was no termination of service as such. It insisted that the respondent who was appointed in the pre primary section and she was rightly denied reporting for duty in the primary section. The School Tribunal on assessment of the evidence noted that the respondent-appellant was appointed in the primary section and this conclusion was drawn on the basis that her appointment was approved for the primary section for the academic year 1996-97 by the competent authority and in addition she had filed the progress report for the years 1994-95, 1995-96 as a Class Teacher of Division C of the First Standard. Section 2(24) of the MEPS Act defines the term "School", which means the primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution, which imparts, general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level.

. Thus, the pre primary school is not covered by the

term "school" as defined under the Act. There was no occasion for the competent authority to grant approval to the appointment of the respondent employee if she was really an Assistant Teacher in the pre primary section. The findings, thus recorded by the School Tribunal on the first point do not suffer from any error apparent on the face of the record.

8. Once it is held that the respondent no.1 was working as a Teacher in the Primary school the insistence of the Management directing her to report to the pre primary section and refusing her to allow to report for duty in the primary section would be an illegal act amounting to an oral termination. The School Tribunal examined the contentions of the Management as set out in the written statement and also noted that as in May, 2002 while the appeal was pending, the respondent No.1 completed her D.Ed. course as well and acquired the requisite qualifications for an Assistant Teacher. On the second issue as well the reasoning given by the School Tribunal cannot be termed as perverse or grossly erroneous calling for interference by this Court while deciding the writ petition under Article 227 of the Constitution.

. However, the issue of pay scale of the respondent

employee will have to be decided by the respondent Nos. 2 and 3 on the basis that she has obtained the D.Ed. qualifications for the first time in May,2002 and unless she was appointed as Craft teacher prior to her acquiring the D.Ed. qualification, she would not be per se entitled for the pay scale of trained teacher in a primary school. The same finding applies for her seniority as well. These shall be decided by the respondent Nos. 2 and 3 after hearing the petitioner Management as well as the respondent employee within a period of two months from today.

9. Hence, the petition is rejected summarily subject to the above directions. Interim order passed earlier stands vacated.

10. Mr. Bandiwadekar, the learned counsel for the petitioner made an oral application to continue the status-quo order. The application is rejected.